

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GARY J. DUARTE et al.,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A. et al.,

Defendants.

3:13-cv-00371-RCJ-VPC

ORDER

This case arises out of the foreclosure of a rental property. Defendant Malcolm & Cisneros has moved to dismiss for failure to state a claim, and Plaintiffs have asked the Court to reconsider its previous grant of Trustee Corps' and Wells Fargo Bank's separate motions to dismiss. For the reasons given herein, the Court grants the motion to dismiss and denies the motion to reconsider.

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs Gary and Ellen Duarte gave lender Wells Fargo a \$213,600 promissory note to refinance property at 1101 Los Amigos Dr., Sparks, NV 89434 (the "Property"), secured by a deed of trust (the "DOT") against the Property given to trustee United Title of Nevada ("United Title"). (See DOT 1–3, Jan. 25, 2007, ECF No. 6-1). Mortgage Electronic Registration Systems, Inc. does not appear to be a party to or third-party beneficiary of the DOT. MTC Financial, Inc., d.b.a. Trustee Corps, as purported attorney-in-fact for Wells Fargo, substituted itself as trustee in place of United Title. (See Substitution, June 13, 2012, ECF No. 6-2). Because it was signed after July 1, 2011, the Substitution, assuming it was otherwise proper, was effective when

1 recorded on June 19, 2012. *See* Nev. Rev. Stat. § 107.028(4). Trustee Corps filed a Notice of
2 Breach and Default and Election to Cause Sale (the “NOD”) along with an Affidavit of Authority
3 (“AA”), indicating a default of \$13,370.88 as of July 9, 2012. (*See* NOD and AA, July 19, 2012,
4 ECF No. 6-3). The Property is not eligible for mediation under Nevada’s Foreclosure Mediation
5 Program. (*See* FMP Certificate, Oct. 15, 2012, ECF No. 6-4). Trustee Corps noticed a trustee’s
6 sale for December 28, 2012. (*See* Notice of Trustee’s Sale, Nov. 20, 2012, ECF No. 6-5).
7 Trustee Corps sold the Property to Federal Home Loan Mortgage Corp. (“Freddie Mac”) for
8 \$139,597 cash at a trustee’s sale on March 8, 2013. (*See* Trustee’s Deed Upon Sale, Mar. 21,
9 2013, ECF No. 6-7). Although the DOT was extinguished upon its own foreclosure by operation
10 of law, Wells Fargo formally assigned the DOT to Freddie Mac, anyway. (*See* Assignment, Mar.
11 19, 2013, ECF No. 6-6).

12 Plaintiffs sued Wells Fargo, Trustee Corps, and Malcolm & Cisneros, A Law Corporation
13 in state court on seven causes of action: (1) breach of contract; (2) breach of the covenant of good
14 faith and fair dealing; (3) statutorily defective foreclosure under section 107.080; (4) intentional
15 interference with contractual relations; (5) equitable estoppel; (6) deceptive trade practices under
16 section 598.0923(2)–(4); and (7) appointment of a receiver. Defendants removed. Trustee Corps
17 and Wells Fargo separately moved to dismiss for failure to state a claim. The Court granted
18 those motions on the merits. Plaintiffs have asked the Court to reconsider, and Malcolm &
19 Cisneros has now separately moved to dismiss for failure to state a claim.

20 **II. DISCUSSION**

21 The Court previously dismissed all claims as against Wells Fargo and Trustee Corps, with
22 leave to amend the deceptive trade practices and promissory estoppel claims. The Court noted
23 that as to the promissory estoppel claim, Plaintiffs alleged no promise by any Defendant, but only
24 an assurance to Plaintiffs by their own attorney. In the present motion to reconsider, Plaintiffs
25 argue that Wells Fargo in fact made certain representations to their attorney sufficient to support

1 a promissory estoppel claim. But Plaintiffs have not yet amended the Complaint and cannot do
2 so via a motion to reconsider. Next, Malcolm & Cisneros asks the Court to dismiss. Plaintiffs
3 have not timely responded.

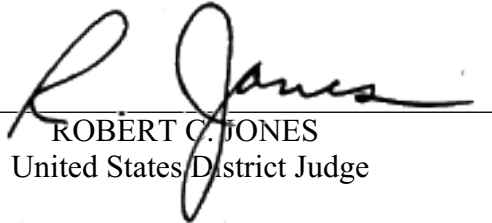
4 **CONCLUSION**

5 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 28) is GRANTED.

6 IT IS FURTHER ORDERED that the Motion to Reconsider (ECF No. 34) is DENIED.
7 Plaintiffs shall have fourteen (14) days from the entry of this Order into the electronic docket to
8 amend the promissory estoppel and deceptive trade practices claims.

9 IT IS SO ORDERED.

10 Dated this 15th day of October, 2013.

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12 ROBERT C. JONES
13 United States District Judge
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